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UNITED STATES DEPARTMENT OF AGRICULTURE  
Agricultural Marketing Service

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LIVESTOCK MARKETING PROBLEMS  
AND THE  
PACKERS AND STOCKYARDS ACT

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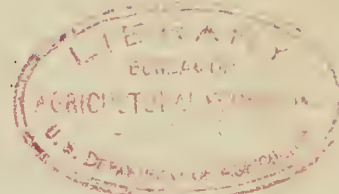
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Agricultural Marketing Service

Address, Central Co-Operative Association,  
St. Paul, Minn., February 13, 1940

I am glad to have this opportunity to talk with a group of livestock producers and to tell you something about the Packers and Stockyards Act. The administration of the act could be made more effective if producers were better informed as to its provisions. Many are not aware of the protection afforded them by the act, and it is probable that a great many more do not realize its limitations. Probably there are even some livestock producers who do not know that there is a Packers and Stockyards Act.

This Act was passed in 1921 primarily for the protection of livestock producers. Any improvement in marketing practices that its enforcement brings about will benefit such producers.

For some time prior to 1921, many livestock producers were of the opinion that all was not right in our marketing procedure and a number of producer organizations had been working for legislation to correct the situation. About that time the Federal Trade Commission, acting under broad powers--much broader investigative powers than the Department of Agriculture has under the present act--made a sweeping investigation of the packing industry. In its report many of the practices that some of the packing companies engaged in were condemned. There was a belief that large packers, through stockyard ownership and other controls, dominated markets, influenced the movement of livestock, controlled prices, assessed exorbitant marketing charges, and engaged in other practices which reduced returns to shippers. The report of the Federal Trade Commission led up to the Consent decree, which, in turn, divorced packers from control of the terminal livestock markets. In addition, the report helped to crystallize public opinion in favor of legislation that would give some competent Federal agency authority to regulate the marketing of livestock. The report also was instrumental in causing the packing industry, stockyards, and the related businesses of buying and selling livestock on commission and speculating in livestock at public stockyards to be singled out for regulation. The Packers and Stockyards Act delegated such authority to the Secretary of Agriculture and charged him with the duty of formulating regulations to govern operations of the regulated businesses.



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The provisions of the act apply to packers' operations and to buying and selling activities on posted stockyards. Stockyards coming under the jurisdiction of the act are those conducted or operated for compensation or profit as a public market and with pens and other inclosures totaling more than 20,000 square feet in area. By posting is meant notifying the public that no person shall carry on the business of a market agency or dealer at the stockyard unless he is properly registered under the act.

#### Most Agencies Good Cooperators

Most posted stockyards and the great majority of the men operating at those yards are not in need of constant policing. Reliable market agencies and the management of posted stockyards are among our best cooperators. They realize that anything of a fraudulent nature, regardless of who is responsible, will react unfavorably to a market and to all who operate on that market. They fully appreciate the necessity of protecting the integrity of a market, if producers are to continue to patronize that market. Without the cooperation of the stockyards and the market agencies, effective administration of the act would not be possible.

Unfortunately there are persons engaged in livestock marketing who need considerable supervision. It is this small group who engage in unethical practices that make matters difficult for other operators as well as for producers.

#### Changes in Marketing Methods

When the Packers and Stockyards Act was passed, about 19 years ago, most of the livestock moving in interstate commerce cleared through the terminal livestock markets. The supervisory agencies, therefore, were set up to operate on terminal markets. Since then marketing has undergone an evolution, and markets have moved closer to the producer. This has been a natural development, and one which was to be expected as a result of good roads, transportation by truck, and certain advantages which have accrued to interior packers, that is, to those located in producing areas away from terminal markets. In recent years, particularly since the 1934 and 1936 droughts, the movement has been accentuated by competition among packers for reduced supplies of livestock and the desire of feeders to purchase their stock in producing areas. This decentralization has not been in violation of the Packers and Stockyards Act, but it has moved many buying and selling operations away from supervised points and paved the way for practices that are not permitted on posted stockyards. When such practices are conducted in places other than posted stockyards, they cannot be prevented by the Packers and Stockyards Administration.

This process of decentralization, therefore, has considerably affected the work in connection with the administration of the act. All of the markets that are set up in producing areas do not qualify as public stockyards within the terms of the act. A great many of those markets do qualify however, and many of them have been and are now being posted. In bringing these interior markets under supervision it has been necessary to spread our supervisory activities rather thin over a broad territory. This has made it impossible to proceed as rapidly as we should like in putting important provisions of the act into operation.



Rather than go further into some of our difficulties of administration, I know that you as livestock producers want to know more of what we are accomplishing on posted stockyards and with the numerous agencies operating on those yards.

### Reasonable Rates and Charges

One of the principal matters recommended by the Federal Trade Commission for correction was rates and charges. The act gives the Secretary of Agriculture the duty of seeing that charges are just, reasonable, and nondiscriminatory. Accordingly, all posted stockyards and the agencies operating on them are required to file with the U. S. Department of Agriculture, and to make available to the public, schedules stating the charges for the several stockyard services. Once filed, it is unlawful to depart from the schedule without giving 10 days' notice to the Secretary of Agriculture by filing a new schedule. A farmer or shipper knows beforehand what he must pay for marketing his livestock through a posted yard. Markets that are not posted under the act or are not under some form of State control are under no legal restraint as to the charges they make and the charges may be varied from time to time at the owner's wish.

As an extreme example of what might happen on a small unregulated market, we had reports last summer from a shipper who had consigned about \$29,000 worth of cattle to a small unregulated market. After the cattle were sold, the stockyard operator deducted about \$5,000 from the proceeds for his services. As nearly as we can estimate, had these same cattle been marketed through the St. Paul or some other terminal market, the charges collected by the yard company and commission firm would have been about \$250. The shipper, of course, complained to us about the exorbitant charges he was forced to pay, but since the livestock had been sent to a market not subject to the provisions of the Packers and Stockyards Act, we could not give him any assistance.

### Schedule of Service Charges Carefully Checked

The schedules submitted by posted yards and market agencies are carefully checked before being accepted for filing. When a charge appears to be unreasonable, we attempt to have it adjusted and brought into line with what is a just, reasonable, and nondiscriminatory charge. We prefer to handle these matters just as informally as possible in order to save expense. Rate hearings are usually long drawn out, expensive affairs. The expense incurred by the Government in such a hearing is paid by the taxpayer, and the courts have ruled that the expense incurred by yard companies or market agencies in a rate hearing may properly be covered by increases in the tariffs. Since the taxpayer and rate-payer together would bear all of the burden of the expense attached to a rate hearing, we do our best to avoid such hearings.

In many cases, even when our investigations show the need of a decrease in rates, we have been able to make adjustments in an informal way. A number of years ago here at St. Paul an audit was made of the books and records of the market agencies and although a hearing seemed necessary, representatives of the agencies went over the situation carefully with representatives of the Department and a satisfactory schedule of rates was worked out which resulted in substantial savings to the shippers in the St. Paul area. The same thing has occurred on a number of other markets.

Some producers feel that the charges made for market services are high. We receive many letters protesting against exorbitant charges, but it may be well to call your attention to a few facts and to point out certain limitations on the agencies engaged in rate making. Congress has said that rates must be just and reasonable, but it has not said what is just and reasonable. That has been left to the courts. In their findings, the courts have set up certain rules of procedure that must be followed in making rates, and the rights of the regulated agency are fully protected. The rates that the Secretary prescribes by order must be such that they will be upheld in court. The rate orders have been rather generally attacked, but with the exception of one very famous case--which is still in the process of litigation--they have been uniformly upheld by the courts. It would be unwise for the Department arbitrarily to fix rates as low as producers and shippers would like to have them, because the courts would most likely hold that such low rates were confiscatory.

The rate work is by no means confined to instances in which formal hearings have been held. Although rate orders have been issued at a relatively small number of markets, the rates and charges for services at the posted markets over the country are not far out of line with what would be considered just and reasonable because of the informal methods which have been used in handling the rate work.

#### Savings Made in Service Costs

The effect of the Department's rate work has been to reduce to a greater or lesser extent the rates and charges assessed against producers and shippers. We estimate that as a result of the orders issued in formal cases and adjustments in rates made at markets following investigations there has been an annual saving to farmers amounting to approximately, \$1,200,000 to \$2,000,000 depending on the number of livestock marketed.

It might be well at this point to comment on our principal complaint--the prices charged for feed by stockyard companies. Naturally it is difficult for a farmer to understand why he should pay \$1 a bushel for corn at a public stockyard when corn is selling at 50 cents a bushel on his farm. This same farmer, however, will go into a restaurant at the stockyards and pay 20 cents for two fried eggs when eggs are selling for 20 cents a dozen at home, and never think of making a complaint. The same fundamental principle is involved in both cases.

The stockyard companies are retailers of feed. They deliver the feed to the pens of the market agencies in any quantity required--sometimes in amounts as small as a peck or a half bushel. Under the law the stockyard company is entitled to a fair return on the value of the property used by the public, and its rates must also cover reasonable operating expenses. If the margin on feed be reduced to cost, the revenue which the stockyard company would lose by this reduction would have to be obtained through an increase in yardage rates, and the courts would back them up in their petition for such an increase. Since the farmer receives a price equal to that paid for livestock for the feed used in the stockyard, it seems reasonable that the service charge be applied to the feed tariff rather than to yardage. At posted stockyards a close check is kept on the handling of feeds, and patrons of those yards are assured that full weight for which they pay is delivered.

#### Agencies and Dealers Must Be Bonded

A second feature of the act's administration which has been very important and has given shippers a great deal of protection is the requirement that market agencies and dealers carry a bond to guarantee fulfillment of financial obligations. The amount of the bond depends on the volume of business handled by each agency. Our records show that in approximately 40 failures of market agencies, bonding companies have been called upon to pay the amounts due shippers. Recently, a market agency on one of the posted yards failed, owing shippers more than could be covered by available funds. The bonding company was immediately called upon, and shippers were paid in full. There have been a few cases where the bond, for one reason or another, was not large enough to cover the full amount owed to shippers. In most of those instances the stockyard company and market agencies, rather than have a stigma of default on their market, have "passed the hat" and made up the amount due the shippers. At the present time coverage at the various markets amounts to about \$12,000,000.

#### Border-line Trade Practices

A third important feature of the administrative work has to do with trade practices. Some of the trade practices which need correction cannot be classified as violations of the act. They begin in an innocent sort of way with no intention to defraud. Our objection to them is that they lead to developments which place producers and shippers at a disadvantage and react unfavorably to the market. In such cases a live-wire supervisor can head off many difficulties. With the cooperation of the yard companies and market agencies a great deal along this line has been accomplished. In addition, supervisors have played an important role in substituting web slappers for prods, working out manifests for truck shipments, arranging more adequate unloading facilities for trucks, rearranging facilities to meet changed conditions, and suggesting many other little improvements which in the aggregate mean much to producers and markets.



Some practices are "betwixt and between" a violation of the act. One such practice was handled by a wide-awake supervisor last year. On his particular market, hogs are sold on a scheduled price. The price is arrived at by a joint higgling and bargaining process after the day's receipts are known and after the buyers know how many hogs they can take. Following this fixing of the price, hogs of a given grade and weight sell for the same price throughout the day with certain discounts or premiums for quality. The system itself is all right. Economists and lawyers assure us that there is nothing wrong with it and we cannot object to its legality. But it paves the way for irregular practices.

In the case referred to, our supervisor found that a few commission firms were selling all their hogs every day to the same traders. The traders sorted and filled the hogs and sold them to packers and order buyers the same day they received them at the same price per hundred pounds that they paid for them. An examination of the traders' books showed that in a year's business they had made a profit of about \$50,000 on these transactions yet they had added nothing to the value of the hogs.

Legally, the traders had done nothing wrong. We had nothing against them. But we took the position that if the commission firms were rendering the service for which farmers were paying them a commission fee, then the hogs should be sorted and filled by them so that the \$50,000, or a major portion of it, would be returned to the shippers. The matter was handled informally. The commission firms were approached separately and the situation pointed out to them. As a result, this practice has been discontinued and if the commission firms do as good a job sorting and filling the hogs as the traders did the farmers patronizing those firms should profit by about \$50,000 annually.

#### Many Practices Clearly Violate Act

There are, of course, a great many practices that are clearly in violation of the act. Most of these are uncovered by our accountant when audits of the records are made, or through information that may come to our supervisors from one source or another. One practice of this character is the failure on the part of a market agency to apply the charges as set out in its tariff. A recent trade practice audit showed that the agencies on one of the midwestern markets had misinterpreted certain provisions of their tariff and had overcharged shippers on a number of consignments. When this matter was called to their attention, they immediately made refund and we hope the situation is clarified so that it will not happen again.

On another market a supervisor recently dropped word that a trade practice audit would soon be conducted on that market. Shortly thereafter a commission firm reported that it had misapplied its tariff and had overcharged \$5 a car on a number of earlots consigned to it for sale. It requested permission to refund something like \$1,000 to shippers before the audit was conducted.



Occasionally we find that a market agency does not properly account for and pay consignors the full proceeds from the sale of stock. And in this same category is the failure on the part of a dealer to pay for live-stock purchased. Sometimes commission firms will send out advertising material that contains false or misleading statements in order to induce producers to ship their livestock to them. In all such instances proper corrective action is taken.

At present we have a case before us in which a market agency has admitted, after having the facts placed before it, that it has violated a number of provisions of the act. Final action has not yet been taken on this case, but this firm appears to be facing a long suspension. Last year, we had a case where a registered order buying agency accepted an order to buy several cars of cattle for a feeder. The firm went to the country, bought and took title to the cattle, upped the price 35 cents a hundred, and billed the feeder for the higher price plus a buying commission. Under the act, that can't be done. A firm cannot have a profit and a commission fee. When a commission fee is charged the dealer must act for the client's best interest. We had to discipline that firm.

Another type of case that is considered unfair and in which disciplinary action has been taken is where a market agency operating through representatives in the country will purchase livestock with drafts drawn by the representative on the agency which the latter will not honor. If the agency has acted in such a way as to lead the producer to believe that the person who purchased the livestock in the country is its agent, then that agency is responsible. The Department will not, however, permit the honoring of drafts from a shipper's proceeds account, as such a practice would endanger funds due others. Drafts must be paid from the firm's own funds.

#### The Troublesome "Weigh-Up" Practice

The "weigh up" has given us considerable trouble. By a "weigh up" is meant the practice of a commission firm weighing to its own account livestock that has been consigned to it for sale. "Weigh ups" are not common on our larger terminal markets, but on the smaller markets, particularly in the East and South, there is a great deal of weighing up. Much can be said both for and against it.

Just the other day in discussing this matter with a commission man on an eastern market, he pointed out that if he received five cars of hogs from as many shippers on a certain market day and was able to sell only three cars, he had to buy the other two himself so that he could remit to all five owners at the same time and at the same price in order to stay in business. If he did not do that, the owners of the two cars that he was unable to sell would be looking for another commission man.

At small markets, farmers themselves prefer to unload their one, two, or three head and let a commission firm weigh them and pay them for the stock rather than wait for 2 or 3 hours for a settlement based on a sale to packers or order buyers. A "weigh up" with the consent of the owner is not a violation of the act, but even so we do not approve of a farmer paying a commission fee to the firm buying his stock. Consequently, we require that if a market agency takes title to the livestock, a full disclosure of this fact must be made in accounting to the owner.

Several years ago a farmer shipped a jack lot of cattle to a market and all of them were sold except three cows. Two employees of the commission firm weighed the three cows to themselves under a fictitious name at about 3-3/4 cents per pound. An hour or so later they sold the same cattle to a packer at 5-1/4 cents. But in remitting to the farmers, they paid only 3-3/4 cents less commission and other charges. The matter was brought to our attention and after an investigation, we issued an order for the firm to cease and desist from such practices and suspended it for an appropriate period. Where the "weigh up" is consistently practiced we carefully check the "weigh up" account, and if the account is yielding more than a reasonable profit steps are taken to correct the situation.

#### Rebates and "Feeing" of Truckers are Violations

Rebates of commission fees to shippers and the paying of fees to truckers to induce them to bring in shipments are not permitted. The former is prohibited by the statute, and the Secretary, in formal orders, has held the latter to be an unfair practice. We believe that feeing of truckers is engaged in at several markets, and we hope to stamp it out as soon as possible. Feeing of truckers, who are acting as farmers' agents, is a form of cutthroat competition which is detrimental to the market, the agencies, and shippers. We expect to take disciplinary action looking toward the suspension of any agency found to be guilty of these practices.

#### Scales Tested Regularly

The fourth feature of the work about which I should like to say a few words is the weighing of livestock. Here at the St. Paul market the weighing is done by employees of the State Railroad and Warehouse Commission on scales owned by the stockyard company, and the scales are tested periodically to insure accurate weighing.

Under the Packers and Stockyards Act, we have three men--all technical experts on scales--who have been working with stockyard company officials, and as a result of this work and the cooperation of the yard companies, we feel that those who ship to terminal markets can be assured that their livestock will be weighed on technically accurate scales. It is essential that the shipper or owner be paid for livestock on the basis of accurate weights. A scale ticket becomes the basis of livestock transactions on the posted stockyards, and it must be handled as though it were a check.

It does little good, however, to have a weighing device which is mechanically perfect unless a weighmaster manipulates the device in an impartial, honest manner. A crooked weighmaster can deduct from or add to the weight of one draft as much as mechanical errors might total in a half year's or a year's time. Perhaps we have paid too much attention heretofore to scales and not enough attention to the human element in weighing. We will devote more effort in the future to selling the idea of honest weighing, and we will give it a place equal in importance to, if not greater, than mechanical perfection in scales. Last year we found some persons counterfeiting scale tickets. They were suspended for a long time. Whenever we find any tampering with weights and scale tickets, we will go after the culprits and prosecute them.

Accomplishments Sought

In summary, what we seek to accomplish through the enforcement of the act is the maintenance of free, open, and competitive markets at which unfair trade practices are kept to a minimum, where the producer may market his livestock with the assurance that he will obtain its full market price and pay only just and reasonable charges for the services rendered by the yard company and market agencies. The U. S. Department of Agriculture, the stockyard companies, and a great majority of the agencies at the markets are in accord that unethical practices should be eliminated.

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